

Indiana Public Defender Commission Meeting Minutes

September 15, 2005

The meeting was called to order at 3:05 p.m. by Chairman Norman Lefstein. Commission members attending were: Ms. Susan Carpenter, Hon. Daniel F. Donahue, Mr. Les Duvall, Ms. Bettye Lou Jerrell, Sen. Timothy Lanane, and Ms. Rebecca McClure. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy, Staff Counsel for the Commission, and Deborah Guthrie-Jones, recording secretary.

Gretchen Etling, Vigo County Chief Public Defender also attended. Members not attending were: Monica Foster, Rep. Ralph M. Foley, Rep. Bob Kuzman, and Sen. Joseph C. Zakas.

1) Approval of Commission Minutes from the June 16, 2005 meeting. Ms. Bettye Lou Jerrell made the motion for the approval of the minutes; Susan Carpenter seconded the motion and the motion carried.

2) Ms. Gretchen Etling, Chief Public Defender, Vigo County. Ms. Etling attended the meeting to answer questions and concerns of the Commission concerning the proposed amendment to the Vigo County Comprehensive Plan, which includes a provision for paying public defenders \$480.00 per diem for trying cases in addition to their annual salary. The matter had been presented to the Commission at its June 16th meeting and was tabled pending an invitation to Vigo County officials to attend the September meeting and address the Commission. Ms. Etling believes that Vigo County needs the flexibility to determine compensation for their public defenders, based on management's assessment of what is best for their county. She stated that this extra incentive was needed in their county in order to keep qualified indigent legal representation without increasing salaries.

The Commission determined that the proposed amendment should not be part of Vigo County's Comprehensive Plan for indigent defense services. Some indicated that the proposal could be an incentive for a public defender to take a case to trial to receive the per diem, perhaps contrary to the best interests of the client. Furthermore, the Commission acknowledged that other alternatives to Vigo County's issue of compensation for qualified personnel may exist and should be considered. Thus, it was the consensus of the Commission not to approve Vigo County's Comprehensive Plan until the following language was redacted from the plan and resubmitted to the committee:

4. Per Diem Payment. In addition to the annual public defender salary, there shall be a \$480.00 per diem for each day the public defender is in a jury or felony bench trial. The duration of the trial shall extend from voir dire until a verdict is returned. If the trial is terminated prior to a verdict being reached, the public defender will be compensated for the days spent in trial prior to the termination.

3) Hiring of Assistant Staff Counsel Position. Chairman Lefstein reported that they had designated a subcommittee to interview for the vacancy in the commission left by the resignation of Bob Borgmann and that they are continuing the search for an assistant staff counsel. Mike Murphy reported that the first 25 resumes received with the first ad are being reviewed. To expand the pool of applicants, a revised advertisement had just been placed in the *Indiana Lawyer* that should generate greater interest.

4) Mike Murphy gave the Quarterly Staff Report. He reported that since Mr. Borgmann's departure, thereby creating a 50% staff reduction, the original intention to maintain a steady schedule of county visits had been temporarily altered in order for him to review reimbursement requests and conduct other office functions.

Prior to August 1, 2005, a significant amount of time was spent traveling to counties. Ten counties were visited: Knox, Benton, Miami, Noble, Fayette, Monroe, Vanderburgh, Tippecanoe, Jennings and Greene. Most of the visits were prompted by requests for help in understanding and completing the new "standardized" *Request for Reimbursement Forms*.

Of particular interest was Miami County. The Public Defender Office has been in place without an appointed Chief Public Defender, as required by IC 33-40-7-6. Mr. Murphy had explained to Miami County officials the consequences of this violation in an extensive visit with them, and after numerous phone conversations, the county officials had authorized the board to take the appropriate steps to appoint a Chief Public Defender. No appointment has been made as of this meeting.

It was the consensus of the members to have Mike Murphy draft a letter to Miami County Public Defender Board and inform them that their county was not in compliance with the guidelines and that they would not be receiving any more reimbursements until they had the situation resolved.

5) Financial Balance of Public Defense Fund. Mike Murphy reported that the balance in the Public Defense Fund as of September 5, 2005, was \$2,293,375.34. If all of the reimbursement requests before the committee at this meeting were approved the total would exceed the balance. Therefore, the non-capital reimbursement amounts would need to be pro-rated to reimburse at a rate of 33.71%.

6). Proposed Guideline for Late Requests. A discussion of late requests was led by Mike Murphy. Research regarding quarterly reimbursement request trends was relevant in reviewing the impact of no action or penalties taken on late submissions in the first two quarters. The data indicate an increasing trend of late submittals, which distort effective projections for future financial requirements. To address this condition and facilitate more accurate financial predictions, the following guideline was developed by Chairman Lefstein and Mr. Murphy:

To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of their maximum eligible reimbursement. Claims received 11 to 20 days later than 45 days after the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter. Upon written request demonstrating good cause, the Commission will consider setting aside the denial of a late claim. Whether a county's quarterly claim is timely, late or denied, caseload data must be submitted for public defender offices and contract attorneys, pursuant to IC 33-40-5-4.

A discussion of adopting the amendment and applying it to the 2nd quarter reimbursements followed. After careful consideration, it was decided that since the existing guideline containing the language “**subject to denial,**” had not consistently been applied in the past, staff counsel would first send a letter to all Public Defender Boards, County Auditors and Public Defender Office Administrators notifying them of the amended guideline and advising them it will be strictly enforced beginning with the 3rd Quarter, 2005. Sen. Lanane made the motion; Susan Carpenter seconded the motion and the motion carried.

7) Claims for 50% reimbursement in capital cases.

INDIANA PUBLIC DEFENDER COMMISSION

<i>Amended Recommendations for Reimbursements in Capital Cases</i>		
September 16, 2005		
COUNTY	DEFENDANT	TOTAL
Elkhart	Salyers 1	\$7,724.63
	Salyers 2	\$11,996.32
	Salyers 3	\$11,709.81
Floyd	Wilson	\$4,870.66
Lake	Aki-Khuam (Williams)	\$15,250.38
	Britt	\$9,897.31
	Jeter	\$8,394.68
	Maust	\$6,504.58
	Roche	\$5,650.63
Madison	Baer	\$47,491.16
Marion	Allen	\$17,631.02
	Holland	\$4,857.70
	Ritchie	\$2,794.50
Vanderburgh	McManus	\$1,660.85
TOTAL		\$156,434.23

A discussion of the Salyers case in Elkhart County determined that, although the reimbursement claims covered a period from 1998 to 2005, the defendant had been in a mental institution for 7 years, unable to stand trial, and the total claim was relatively small. Several documentation letters were submitted with the claim. It was the consensus of the committee to pay the Elkhart County request for reimbursement.

Bettye Lou Jerrell made a motion for the approval of all the submitted reimbursements in Capital Cases as amended to include the Salyers case from Elkhart County. Susan Carpenter seconded the motion and the motion carried.

8) Claims for 40% reimbursement in noncapital cases. Mike Murphy reported that 20 of the 44 submitted claims were on the new reporting forms. He also stated that some type of case information

was received in all of the reimbursement claims submitted, and in some cases, a lot more information than was needed.

For the third quarter submissions, to be considered at the December 15, 2005 meeting, the “standardized” forms are mandatory or requests will be denied. The new guideline will also be applied. Counsel felt that this could be problematic but not untenable for some of the non-technological counties.

Indiana Public Defender Commission

Recommendations for Reimbursement in Non-capital Cases--September, 2005

COUNTY	PERIOD COVERED	TOTAL EXPENSE	ADJUS'T	ADJUS'D EXPEND.	40% REIMB.	PRORATED REIMB.
ADAMS	4/1/05 - 6/30/05	\$51,292.13	\$11,179.05	\$40,113.08	\$16,045.23	\$13,522.92
ALLEN	4/1/05 - 6/30/05	\$690,311.77	\$0.00	\$690,311.77	\$276,124.71	\$232,717.91
<i>Benton (1Q05)</i>	<i>1/1/05 - 3/31/05</i>	<i>\$21,302.00</i>	<i>\$2,574.97</i>	<i>\$18,727.03</i>	<i>\$7,490.81</i>	<i>\$6,313.25</i>
BENTON (2Q05)	4/1/05 - 6/30/05	\$24,160.84	\$3,345.35	\$20,815.49	\$8,326.20	\$7,017.32
BLACKFORD	4/1/05 - 6/30/05	\$18,492.70	\$0.00	\$18,492.70	\$7,397.08	\$6,234.26
CARROLL	4/1/05 - 6/30/05	\$25,860.32	\$0.00	\$25,860.32	\$10,344.13	\$8,718.03
CLARK	4/1/05 - 6/30/05	\$100,205.56	\$1,525.97	\$98,679.59	\$39,471.84	\$33,266.87
DECATUR	4/1/05 - 6/30/05	\$29,458.74	\$9,432.60	\$20,026.14	\$8,010.46	\$6,751.22
FAYETTE	4/1/05 - 6/30/05	\$64,215.20	\$0.00	\$64,215.20	\$25,686.08	\$21,648.23
FLOYD	4/1/05 - 6/30/05	\$91,215.38	\$0.00	\$91,215.38	\$36,486.15	\$30,750.53
FULTON	4/1/05 - 6/30/05	\$38,714.78	\$20,865.43	\$17,849.35	\$7,139.74	\$6,017.37
GRANT	4/1/05 - 6/30/05	\$151,435.00	\$17,992.28	\$133,442.72	\$53,377.09	\$44,986.21
GREENE	4/1/05 - 6/30/05	\$59,867.35	\$0.00	\$59,867.35	\$23,946.94	\$20,182.48
HANCOCK	4/1/05 - 6/30/05	\$80,945.85	\$0.00	\$80,945.85	\$32,378.34	\$27,288.46
HENRY	4/1/05 - 6/30/05	\$60,918.59	\$0.00	\$60,918.59	\$24,367.44	\$20,536.88
JASPER	4/1/05 - 6/30/05	\$32,826.71	\$13,888.22	\$18,938.49	\$7,575.40	\$6,384.55
JAY	4/1/05 - 6/30/05	\$45,562.99	\$11,058.98	\$34,504.01	\$13,801.60	\$11,631.99
<i>Jennings (1Q05)</i>	<i>1/1/05 - 3/31/05</i>	<i>\$17,951.64</i>	<i>\$0.00</i>	<i>\$17,951.64</i>	<i>\$7,180.66</i>	<i>\$6,051.86</i>
JENNINGS (2Q05)	4/1/05 - 6/30/05	\$27,531.70	\$0.00	\$27,531.70	\$11,012.68	\$9,281.49
KNOX	4/1/05 - 6/30/05	\$173,942.62	\$50,712.40	\$123,230.22	\$49,292.09	\$41,543.37
KOSCIUSKO	4/1/05 - 6/30/05	\$72,329.57	\$0.00	\$72,329.57	\$28,931.83	\$24,383.75
LAKE	4/1/05 - 6/30/05	\$837,155.44	\$0.00	\$837,155.44	\$334,862.18	\$282,221.85
LAPORTE	4/1/05 - 6/30/05	\$90,888.75	\$0.00	\$90,888.75	\$36,355.50	\$30,640.42
MADISON	4/1/05 - 6/30/05	\$327,714.33	\$1,193.86	\$326,520.47	\$130,608.19	\$110,076.58
MARION	4/1/05 - 6/30/05	\$1,777,848.22	\$33,757.99	\$1,744,090.23	\$697,636.09	\$587,967.70
MIAMI	4/1/05 - 6/30/05	\$63,209.03	\$7,950.82	\$55,258.21	\$22,103.28	\$18,628.64
MONROE	4/1/05 - 6/30/05	\$190,547.27	\$2,920.26	\$187,627.01	\$75,050.80	\$63,252.81
MONTGOMERY	4/1/05 - 6/30/05	\$71,500.82	\$15,206.06	\$56,294.76	\$22,517.90	\$18,978.09
NOBLE	4/1/05 - 6/30/05	\$51,399.41	\$0.00	\$51,399.41	\$20,559.76	\$17,327.77

OHIO	4/1/05 - 6/30/05	\$9,436.75	\$2,595.38	\$6,841.37	\$2,736.55	\$2,306.36
ORANGE	4/1/05 - 6/30/05	\$36,104.77	\$0.00	\$36,104.77	\$14,441.91	\$12,171.64
PARKE	4/1/05 - 6/30/05	\$20,018.40	\$0.00	\$20,018.40	\$8,007.36	\$6,748.60
PULASKI	4/1/05 - 6/30/05	\$29,405.84	\$6,042.30	\$23,363.54	\$9,345.42	\$7,876.32
RUSH	4/1/05 - 6/30/05	\$32,078.23	\$12,994.84	\$19,083.39	\$7,633.36	\$6,433.40
SCOTT	4/1/05 - 6/30/05	\$48,621.19	\$17,249.84	\$31,371.35	\$7,282.69	\$6,137.85
SHELBY	4/1/05 - 6/30/05	\$61,814.49	\$0.00	\$61,814.49	\$24,725.80	\$20,838.90
SPENCER	4/1/05 - 6/30/05	\$9,353.25	\$0.00	\$9,353.25	\$3,741.30	\$3,153.17
STEUBEN	4/1/05 - 6/30/05	\$77,163.32	\$23,121.14	\$54,042.18	\$21,616.87	\$18,218.70
<i>Sullivan (1Q05)</i>	<i>1/1/05 - 3/31/05</i>	<i>\$18,063.28</i>	<i>\$6,636.89</i>	<i>\$11,426.39</i>	<i>\$4,570.56</i>	<i>\$3,852.07</i>
SULLIVAN (2Q05)	4/1/05 - 6/30/05	\$15,718.25	\$5,463.93	\$10,254.32	\$4,101.73	\$3,456.94
SWITZERLAND	4/1/05 - 6/30/05	\$21,237.74	\$0.00	\$21,237.74	\$8,495.10	\$7,159.67
TIPPECANOE	4/1/05 - 6/30/05	\$258,467.16	\$73,847.76	\$184,619.40	\$73,847.76	\$62,238.89
VERMILLION	4/1/05 - 6/30/05	\$17,076.96	\$5,189.13	\$11,887.83	\$4,755.13	\$4,007.62
VANDEBURGH	4/1/05 - 6/30/05	\$357,389.44	\$0.00	\$357,389.44	\$142,955.78	\$120,483.13
VIGO	4/1/05 - 6/30/05	\$284,661.75	\$53,718.25	\$230,943.50	\$92,377.40	\$77,855.67
WARREN	4/1/05 - 6/30/05	\$9,298.22	\$0.00	\$9,298.22	\$3,719.29	\$3,134.62
WASHINGTON	4/1/05 - 6/30/05	\$57,238.48	\$14,522.78	\$42,715.70	\$17,086.28	\$14,400.32
TOTAL		\$6,651,952.23	\$424,986.48	\$6,226,965.75	\$2,485,520.49	\$2,094,796.67

Judge Donahue abstained from consideration of the Clark County Non-Capital claim.

Senator Lanane moved for the approval of all Non-Capital claims. Susan Carpenter seconded the motion and the motion carried.

9) Attachments

A. Tim States, the Court Administrator for Madison County Unified Courts had written to the Commission concerning a proposal in their county to reduce the health insurance benefits for existing part-time public defenders. The successful motion would require Madison County public defenders to pay all costs, above the single-rate, for health insurance beginning in 2006. The change was a cost-cutting mechanism aimed at reducing the County obligation to non-traditional county employees. The letter was asking for clarification as to whether this action by the Council jeopardized the current 40% reimbursement for public defender expenses in Madison County. Since the prosecutor's health rates would not be affected, there was a question as to whether the plan would put at risk the current guidelines and language concerning pay "substantially comparable to prosecutors salaries". The question would be, "does it maintain a certain level of comparability?"

Senator Lanane abstained from consideration of Madison County's inquiry.

After discussion by the Commission, it was the consensus to table the agenda item until they had more information and facts on the issue. Mr. Murphy promised to look into this matter.

B. A letter from Mr. Craig V. Braje, of Laporte County, concerning pay increases was addressed by the committee. Mr. Braje was seeking guidance on whether or not he would be violating *Standard G* of the Public Defender Commission if he declined the required minimum acceptable raise.

After discussion by the Commission, it was determined that waiving the required increase in salary to “not less than 90%” of the Prosecutor’s salary would not be allowed, and would set an inappropriate precedent. Mike Murphy was appointed to address the issue by letter.

C. A letter from Mr. David Schneider, Chief Public Defender in Lake County indicated that the requested misdemeanor caseload information was not available through his office since they handled only the felony cases. The judges in circuit courts appoint their own public defenders for all misdemeanor cases.

D. Larry Landis reported that there is currently a manual being written with guidelines for county board members. They are making progress on the manual.

10) New Business.

A. Chairman Lefstein noted that Larry Landis would be moderating a meeting on Indigent Defense in Indiana on October 21, 2005, at the Indiana Bar Association. Justice Boehm will be the opening speaker.

B. It was noted by Commission members that Staff Counsel Mike Murphy prepared a very adequate Quarterly Meeting.

11) The Next Meeting is scheduled for Thursday, December 15, 2005, 3:00 P.M.

12) Meeting Adjournment. The meeting adjourned at 4:40 p.m.

Norman Lefstein, Chairman

Date